IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 235 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M.B.PATEL - Appellant
Versus
M/S.VANDANA TEXDYES & 5 – Respondents

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Appearance :
MR HARESH J TRIVEDI for Appellant : 1,
NOTICE SERVED for Respondents : 1 - 6.
MR MC BAROT for Respondents : 1 - 6.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 12/02/2007

ORAL JUDGMENT

1. The appellant Gujarat Pollution Control Board, through its Assistant Environmental Engineer, has preferred this appeal under Section 378 of

the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) challenging the order of acquittal dated 10.11.1994 passed by the learned JMFC, Ankleshwar in Criminal Case No. 3002 of 1990 acquitting the accused of the charge of committing an offence and violating Sections 24 and 25 of The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Act' for short).

2. This Court (Coram: D.G. Karia, J.)(as he then was) on 14.3.1996 has granted leave and admitted the appeal and it was ordered to be expedited.

3. Heard the learned counsel for the parties.

4. Brief facts leading to filing this appeal deserves to be set out as under.

5. The original complainant – Assistant Environmental Engineer, Gujarat Pollution Board had to lodge complaint in the Court of learned JMFC Ankleshwar, which came to be registered as Criminal Case No. 3002 of 1990 alleging that the accused had been violating the provisions of Sections 24 and 25 of the Act. The complainant has stated in his complaint that the accused No. 1 was a Company and accused Nos. 2 to 6 were Partners running the business of accused No. 1. The Company was engaged in manufacturing fast

based dyes and consuming H2SO4, HCL, HNO3, Soda Ash etc. and water in large quantity everyday. The officer of the Board visited the Company on 19.10.1989 and after issuing requisite notice of Inspection and Entry under Section 23 of the Act, collected sample of discharged affluent from the outlet of the Company and it was sent for testing and analysis to the laboratory in his Board. As per the report of the Analyst dated 7.11.1989, the affluent was not treated and it was discharged without any treatment and it was not within the tolerance limit prescribed under the law. As the accused had not complied with the terms of consent and permitted untreated affluent to be discharged affecting the environment, they had committed violation of Sections 24 and 25 of the Act and which was punishable under Sections 43, 44 and 47 of the Act. This complaint was lodged on 26.07.1990. The accused were summoned. They denied the charge. The trial had commenced. The court recorded the case of the prosecution. The trial Court came to the conclusion that as the prosecution has failed in establishing its case beyond reasonable doubt that the accused had committed violation of Sections 24 and 25 rendering them liable to punishment under Sections 43, 44 and 47 of the Act, they were acquitted vide impugned order of acquittal dated 10.11.1994. The said order is assailed before this Court in present Appeal under Section 378

of the Code.

6. Shri Trivedi, learned counsel appearing for the appellant has submitted that the records and proceedings go to show that the trial Court has erred in acquitting the accused when they were charged with serious offences affecting the environment and Society. Shri Trivedi has submitted that technical infirmities if any ought not to have weighted with the trial Court in acquitting the accused, who were facing serious charge of violating the provisions of Sections 24 and 25 of the Act. Shri Trivedi has submitted that the prosecution was duly lodged and as the prosecution established its case beyond doubt, the accused ought to have been convicted and punished in accordance with law.

7. Shri Barot, learned counsel appearing for the respondents original accused has submitted that this being an acquittal appeal under Section 378 of the Code, unless and until, it is aptly demonstrated by the appellant that the order impugned has resulted into miscarriage of justice, the same need not be interfered with. It is submitted that the very prosecution itself was not competent to go on in view of the fact that the complainant i.e. The Assistant Environmental Engineer was not duly authorized by the Board to lodge the prosecution. Section 49 of the Act unequivocally provides for lodging

the prosecution only by the Board or any officer authorized in this behalf by the Board. The resolution of Board dated 27th March, 1984 at Ex. 8 indicates that the Board has authorized the Chairman to lodge the prosecution. This Court in case of ***M/S. NICOSULF INDUSTRIES & EXPORTS PVT. LTD. & ANR. VS. STATE OF GUJARAT & ANR.*** reported in 2002(2) GLR p.1580 interpreted this very Resolution dated 27th March, 1984 and held that in view of this Resolution, it was either the Chairman could have filed the complaint or a person, specially authorized by the Board should have filed the complaint. In the instant case, the complainant has relied upon this very Resolution dated 27th March, 1984, which was the subject matter of interpretation before this Court in case of M/s. Nicosulf Industries & Exports Pvt. Ltd. (Supra) and therefore, this very prosecution had been vitiated as it was not validly instituted by authorized person. It is also submitted that the prosecution could not proved due compliance with mandatory provision of Section 21 of the Act, which is mandatory in nature. The trial Court has clearly observed that the very fact about sealing the container which was employed for collecting the affluent was not proved and therefore, there was a possibility of reasonable doubt in favour of the accused that there was non-compliance with Section 21 of the Act. It is also contended on behalf of the respondents that there was also a

breach of mandatory provisions of Rule 27 of the Gujarat Water (Prevention and Control of Pollution) Rules, 1976. As it has not been proved that the provisions of Rule 27 have been duly complied with. It is submitted that this Court in case of ***DAHYABHAI KALUBHAI SOLANKI VS. DEVINE INTERMEDIATES & CHEMICALS & ORS.***, reported in 1996(1) GLR p.729 has held Rule 27 to be mandatory and therefore, any breach thereof would vitiate the prosecution against the accused.

8. This Court has heard the counsel for the parties at length and perused the record. This being an acquittal appeal, it is always open to the accused respondent to advance submission in support of order of acquittal on the ground independent then those relied upon by the trial Court for recording the acquittal. The order of acquittal is essentially based upon the fact that the prosecution has failed in proving its case beyond reasonable doubt. It deserves to be noted that the prosecution and the complainant mainly relied upon the Resolution dated 27th March, 1984 as the authority for lodging the complaint. This very Resolution was subject matter of interpretation in the case of M/s. Nicosulf Industries & Exports Pvt. Ltd. (supra). In the said judgment, this Court has observed that the complaint filed by the Assistant Law Officer cannot be said to be the complaint

validly filed and therefore, the entire case of the prosecution should fail only on this Count.

9. The deposition of the complainant also go to show that he could not prove due compliance with mandatory provisions of Section 21 of the Act, which has weighed the trial Court to raise reasonable doubt in the case of the prosecution.

10. In view of the aforesaid discussion, this Court is of the considered view that the order of acquittal does not deserve from any infirmities so as to reverse the same and the order of acquittal cannot be said to have suffered from any patent infirmities or perversity so as to result into miscarriage of justice. On the contrary, reversing the order despite the infirmities noticed would rather result into miscarriage of justice.

11. In the result, the appeal fails and is dismissed.

(S.R.BRAHMBHATT, J.)

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